

IN THE SENATE OF THE UNITED STATES.

DECEMBER 7, 1858.—Ordered to lie on the table.
DECEMBER 13, 1858.—Referred to the Committee on Claims.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of

MARY E. D. BLANEY, Administratrix, *vs.* THE UNITED STATES.

1. The printed record of the case, and addenda, embracing the papers used in the trial.

2. Opinion of the Court adverse to the claim.

3. The original papers of the printed record are enclosed in a separate envelope and herewith transmitted to the House of Representatives.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this seventh day of December, A. D. 1858.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE COURT OF CLAIMS.

MARY E. D. BLANEY, administratrix of George Blaney *vs.* THE UNITED STATES.

To the honorable the Judges of the Court of Claims :

The petition of Mary E. D. Blaney in her own right and as administratrix of George Blaney, late a brevet major of the Corps of Engineers in the army of the United States, most respectfully repre-

sents : that at the time of her husband's death, to wit, on the 15th of May, 1835, the government of the United States was indebted to him in a considerable sum of money, which appears from the settlement of his accounts at the treasury of the United States, made on the 9th of January, 1847, and which was paid to her on the 15th of March following; that at the time of his death there remained at his credit in the Bank of the United States, at Fayetteville, North Carolina, the sum of three thousand one hundred and eighty-two dollars and fifty-five cents, of which amount the sum of two thousand four hundred and thirty-eight dollars and twelve cents was his private funds, and for which, on the day of his death, he signed a check on said bank in favor of and payable to the order of your petitioner; that on the presentation of said check at the bank and a demand of the payment thereof the proper officer of the bank declined making payment until instructed to do so by the War Department; and on application for such instructions by the bank, the then Acting Secretary of War (C. A. Harris) forbid the payment, and directed the bank to pay over the whole amount at his credit to the treasury of the United States, which order of the Secretary of War was complied with by said bank, to the great injury and wrong of your petitioner and her orphan children.

Your petitioner is advised, and so represents, that her case is not the ordinary one of a debt due by the United States to an individual for services, upon which interest is not usually allowed, but that in consequence of the arbitrary exercise of authority by a high officer of the government, in forcibly taking the money properly belonging to her and applying it to the use of the United States, the government is as much bound by every principle of equity and justice, to pay interest for the use of such money as an individual would be; and she therefore petitions your honorable body to authorize the payment of interest upon the sum thus wrongfully and illegally withheld from her.

Your petitioner further represents in elucidation of her claim, that her late husband, Major Blaney, was, at the time of his death, and had been for many years before, in the superintendence of and the disbursing officer for the public works then in progress of construction at Oak island and Cape Fear river, in North Carolina; that at the time of his death an apparent balance appeared against him on the books of the treasury, arising by the suspension of various items of charge in his accounts, resulting from an erroneous decision by the accounting officers of the treasury in regard to the true meaning and interpretation of the army regulations of 1825, under which his disbursements were made; which decisions were overruled by the judgment of the Supreme Court of the United States in an analogous case, and in pursuance of which the suspended items in question were in part finally admitted to his credit; and if these items had been admitted in the first place, as they should have been, the result would then have been to exhibit the balance as reported on the settlement of his accounts, and paid on the 15th of March, 1847, as justly due to him at the time of the seizure of his private money under the order

of the Acting Secretary of War, and paid into the public treasury for the use of the United States.

Your petitioner also respectfully begs leave to state that, soon after the death of her said husband, and repeatedly from that time up to the 9th of January, 1847, she urged a final settlement of his public accounts, but the accounting officers of the treasury, adhering to their former decision, declined making any settlement; and hence even the small balance of pay and emolument, amounting to one hundred and fifty-two dollars and ninety-five cents, due to her said husband, was refused to be paid to her, and withheld until after the settlement of January, 1847; upon this amount she also believes herself to be entitled to interest. The documents herewith presented afford abundant evidence in support of the facts here set forth.

Your petitioner therefore humbly prays your honors to inquire into the matters hereinbefore set forth, and to grant such relief as to law and justice appertains.

The petitioner would further show that, on the 24th of February, 1848, the claim of your petitioner having been presented to the Senate of the United States, was referred to the Committee on Claims, but no action appears to have been had thereon. On the 22d of January, 1852, the same was referred to said Committee on Claims of the Senate, and on the 12th of April following a bill (No. 359) was reported to the Senate. On the 13th of December, 1853, the same was referred to the said Committee on Claims, and on the 21st of the same month a bill (No. 52) was reported to the Senate, (Rep. No. 9,) and subsequently passed the Senate; and on the 3d day of March, A. D. 1855, the same was, by the House of Representatives, referred to this honorable court.

Your petitioner further states that her husband, the late Major George Blaney, was entitled to pay for his services in receiving and issuing, and for responsibility therefor, of subsistence stores for the use of the laborers employed on the public works in North Carolina, under his charge from the year 1826 to 1835. That said service was wholly and entirely separate and distinct from those pertaining to his legitimate and proper duties as the officer in charge of the public works at Oak island and Cape Fear river, and claims the pay and allowances for such service as have been allowed in analogous cases. These claims were submitted to Congress at the same time as the claims before referred to, and adversely reported upon as stated in report accompanying bill No. 52, as aforesaid.

Your petitioner presents in detail a statement of her respective claims in a schedule hereto annexed, marked A.

Your petitioner would further show that this claim has not been assigned or transferred to any person, nor any part of the same, but the same is the property of your petitioner as administratrix as aforesaid.

Your petitioner prays your honors to inquire into the matter aforesaid, and on finding the same to be true, to grant such relief as to law and equity shall appertain.

A.

Schedule of the claims of Mary E. D. Blaney, in her own right and as administratrix of George Blaney, late major of the Corps of Engineers, referred to in the foregoing and annexed petition, viz:

No. 1.	Interest on the balance due on the settlement of accounts at the treasury, from May 15, 1835, to March 15, 1847.....	\$1,156 68
No. 2.	Interest on balance of pay and emoluments due and not paid until after said settlement, \$152 95	110 12
No. 3.	For services in receiving, issuing, and accountability for subsistence stores for the laborers employed on the public works at Oak island, N. C., in the years 1826, '27, '28, '29, '30, '31, '32, '33, '34, and to March 3, 1835—in all $69\frac{1}{10}$ months, at \$20 per month.....	\$1,382 00
	For ditto at Cape Fear river for the same period—in all $69\frac{1}{10}$ months, at \$20 per month.....	1,362 00
		<hr/> 2,744 00 <hr/>

To the honorable the Senate and House of Representatives of the United States:

The petition of Mary E. D. Blaney administratrix of George Blaney, late a brevet major of the Corps of Engineers in the army of the United States, most respectfully represents that at the time of her husband's death, to wit, on the 15th May, 1835, the government of the United States was indebted to him in a considerable sum of money, which appears from a settlement of his accounts at the treasury of the United States made on the 9th January, 1847, and which was paid to her on the 15th March following. That at the time of his death there remained at his credit in the Bank of the United States at Fayetteville, North Carolina, the sum of \$3,182 55, of which amount the sum of \$2,438 12 was his *private funds*, and for which on the day of his death, he signed a check on said bank in favor of and payable to the order of your petitioner; that on the presentation of said check at the bank, and a demand of the payment thereof, the proper officer of the bank declined making payment until instructed to do so by the War Department; and on application for such instructions by the bank, the then Acting Secretary of War (C. A. Harris) forbid the payment and directed the bank to pay over the whole amount at his credit to the treasury of the United States, which order of the Secretary of War was complied with by said bank to the great injury and wrong of your petitioner and her orphan children.

Your petitioner is advised and so represents that her case is not the ordinary one of a debt due by the United States to an individual for

services upon which interest is not annually allowed; but that in consequence of the arbitrary exercise of authority by a high officer of the government in forcibly taking the money belonging to her, and applying it to the use of the United States, the government is as much bound by every principle of equity and justice to pay interest for the use of such money as an individual would be; and she therefore petitions your honorable body to authorize the payment of interest upon the sum thus wrongfully and illegally withheld from her.

Your petitioner further represents in elucidation of her claim, that her late husband, Major Blaney, was at the time of his death, and had been for many years before, in the superintendence of and the disbursing officer for the public works then in progress of construction at Oak island and Cape Fear river, North Carolina; that at the time of his death an apparent balance appeared against him on the books of the treasury; arising by the suspension of various items of charge in his accounts resulting from an erroneous decision by the accounting officers of the treasury in regard to the true meaning and interpretation of the army regulations of 1825, under which his disbursements were made; which decisions were overruled by the judgment of the Supreme Court of the United States in an analogous case, and in pursuance of which the suspended items in question were in part, finally admitted to his credit; and if these items had been admitted in the first place as they should have been, the result would then have been to exhibit the balance as reported on the settlement of his accounts and paid on the 15th March, 1847, as justly due him at the time of the seizure of his private money under the order of the Acting Secretary of War, and paid into the public treasury for the use of the United States.

Your petitioner also respectfully begs leave to state that soon after the death of her said husband, and repeatedly from that time up to the 9th January, 1847, she urged a final settlement of his public accounts, but the accounting officers of the treasury adhering to their former decision declined making any settlement; and hence even the small balance of pay and emoluments amounting to \$152 95, due to her said husband, was refused to be paid to her and withheld until after the settlement of January, 1847. Upon this account she also believes herself to be entitled to interest. The documents herewith presented afford abundant evidence in support of the facts here set forth.

Your petitioner therefore humbly prays your honorable body to pass an act for her relief, directing the payment to her of interest upon the sums so unjustly withheld from her, and that the accounts of the late Major Blaney may be settled by the accounting officers of the treasury, upon the principles of equity and justice, and such further allowance be made in said settlement of the items still disallowed, to which he is entitled in accordance with the decisions of the courts of the United States in similar cases, by which other officers of the same corps have received allowances, and where those decisions have been in effect, affirmed by the Supreme Court on appeal, by a divi-

sion in that court in such case; and as in duty bound she humbly prays,
&c.

MARY E. D. BLANEY,
Adm'x of Geo. Blaney, late Major Corps of Engr's U. S. Army,
By R'D BURGESS, her Attorney.

WASHINGTON CITY,
February 9, 1848.

Quarterly return of provisions purchased for the subsistence of persons employed on the fortifications at Oak island, N. C., and issues of the same during the quarter ending the 31st of March, 1835.

Description of provisions.	On hand per last return.		Additions during the quarter.		Aggregate, including those additions.		Consumed during the quarter.		On hand at the expiration of the quarter.		Number of rations in the quantity consumed.	Remarks.
	Quantity.	Cost.	Quantity.	Cost.	Quantity.	Cost.	Quantity.	Cost.	Quantity.	Cost.		
Pork, barrels of -----	3	\$39 50	8	\$96 00	11	\$129 50	7		2		1,376	1 ounce of pork,
Pork, pounds of -----	67	3 84	-----	-----	67	3 84	148	\$91 05	119	\$42 29		27 ounces of
Flour, barrels of -----	9	60 16	6	39 00	15	99 16	11		4		1,376	of rice, 1 ounce
Flour, pounds of -----	172½	5 88	-----	-----	-----	-----	166	77 36	6½	27 68		of soap, 1½ gill
Rice, pounds of -----	450	13 83	-----	-----	450	13 83	258	7 91	192	5 92	1,376	of molasses constitute a ration.
Soap, pounds of -----	389½	27 47	-----	-----	389½	27 47	86	6 07	303½	21 40	1,376	
Molasses, gallons of ---	64½	20 01	53	15 90	117½	35 91	64½	19 92	52¾	15 99	1,376	
		164 69		150 90		315 59		202 31		113 28		

SMITHVILLE, N. C., March 31, 1835.

GEO. BLANEY, *Brevet Major Corps of Engineers.*

NOTE.—Similar returns from Fort Caswell for the following quarters, viz: the 4th of 1826; the 1st of 1827; the 2d and 3d of 1830; the 1st, 2d, 3d, and 4th of 1831; the 1st, 2d, and 3d of 1832; the 2d, 3d, and 4th of 1833; the 1st, 2d, 3d, and 4th of 1834, are filed as evidence in this cause.

JOHN D. McPHERSON, *Deputy Solicitor.*

OFFICE SOLICITOR OF THE COURT OF CLAIMS,
Washington, January 10, 1857.

MARY E. D. BLANEY *vs.* THE UNITED STATES.

In the above entitled cause it is admitted on the part of the United States, that Major Geo. Blaney rendered a "quarterly return of provisions purchased for the subsistence of persons employed on the fortifications at Oak island, and issues of the same during the quarter, &c.," for the following quarters, viz: 2d and 3d of 1827; 1st, 2d, 3d, and 4th of 1828; 1st and 2d of 1829; and the 1st of 1833; the originals of all which are on file in the engineer department, and have been inspected by the undersigned. The returns for the 2d, 3d, and 4th quarters of 1828 are signed by Major Blaney as captain Corps Engineers and acting commissary subsistence; the remainder of the returns are signed by him as captain of engineers only. Lieutenant A. J. Swift rendered for the 3d and 4th quarters of 1826.

JNO. D. McPHERSON,
Deputy Solicitor U. S. Court of Claims.

Quarterly return of provisions purchased for the subsistence of persons employed on the Cape Fear river below Wilmington, N. C., and issues of the same during the quarter ending the 31st of March, 1835.

Description of provisions.	On hand per last return.		Add'ns during the quarter.		Aggregate, including those additions.		Consumed during the quarter.		On hand at the expiration of the quarter.		The number of rations in the quantity consumed.	Number of rations issued.									
	Quantity.	Cost.	Quantity.	Cost.	Quantity.	Cost.	Quantity.	Cost.	Quantity.	Cost.		Captain steam b't.	Superintendent.		Engineers.		Laborers.		Aggregate.		
													Men.	Rations.	Men.	Rations.	Men.	Rations.	Men.	Rations.	Men.
Pork, barrels of.....	3	\$34 64	14	\$164 50	17	\$199 14	10	} \$125 46	7	} \$84 97	2, 131	1	180	1	180	1	90	35	1, 681	38	2, 131
Pork, pounds of.....	175½	11 29	-----	-----	175½	11 29	131		44												
Beef, fresh, pounds of	-----	-----	485¼	29 11	485¼	29 11	485½	29 11	-----	-----	222¼	-----	-----	-----	-----	35	222	35	222	35	222
Rice, pounds of.....	280½	8 78	2, 978	95 97	3, 258½	104 75	3, 258½	104 75	-----	-----	2, 353	1	180	1	180	1	90	35	1, 903	38	2, 353
Soap, pounds of.....	-----	-----	219	15 33	219	15 33	104	7 28	115	8 05	2, 353	1	180	1	180	1	90	35	1, 903	38	2, 353
Molasses, gallons of	34	9 81	67	20 30	101	30 11	55	16 38	46	13 73	2, 353	1	186	1	180	1	90	35	1, 903	38	2, 353
		64 52		325 21		389 73		2 2 98		106 75											

SMITHVILLE, NORTH CAROLINA,
March 31, 1835.

GEO. BLANEY,
Major, Corps of Engineers.

NOTE.—It is admitted that Captain Blaney rendered returns similar to the foregoing for the following quarters, viz: the 3d of 1829; the 1st, 2d, and 3d of 1830; the 1st, 2d, 3d, and 4th of 1831; the 1st, 2d, 3d, and 4th of 1832; the 2d, 3d, and 4th of 1833; the 1st, 2d, 3d, and 4th of 1834; the 1st of 1835; the originals of which have been produced.—Jno. D. McPHERSON, *Deputy Solicitor.*

WAR DEPARTMENT, *July 1, 1835.*

SIR: Your letter of the 24th ultimo has been received.

I have to request that you will deposit to the credit of the Treasurer of the United States the balance that stands to the credit of the late Major Blaney, under the following heads, on the books of your institution:

Cape Fear river.....	\$1,762 99
Oak Island	1,419 56

You will please to transmit certificates of deposit to this department, upon the receipt of which measures will be taken to pass the above sums to his credit here.

I am, &c.,

C. A. HARRIS,
Acting Secretary of War.

JOHN HASKE, Esq.,

President U. S. Bank, Fayetteville, N. C.

OFFICE BANK UNITED STATES, *Fayetteville, July 6, 1835.*

SIR: Your letter of the 1st instant is received.

Since Mr. Haske's letter to you of the 24th ultimo, a check drawn by Major Blaney for \$2,438 12 has been presented for payment. I have declined paying it until I hear from you on the subject. The check is dated the 15th May, in favor of Mary E. D. Blaney, and witnessed by Lieutenant Dimick and Major Churchill.

I am, respectfully, yours,

JNO. W. SANDFORD, *Cashier.*

C. A. HARRIS, Esq.,

Acting Secretary of War.

DEPARTMENT OF WAR, *July 10, 1835.*

SIR: I have received your letter of the 6th instant, in which you state that a check of Major Blaney in favor of Mary E. D. Blaney, for \$2,438 12, has been presented, which you have declined paying before the views of this department are ascertained.

In reply I have to state, that no reason is perceived for changing or revoking the instructions of the 1st instant.

I am, &c.,

C. A. HARRIS,
Acting Secretary of War.

JNO. W. SANDFORD, Esq.,

Cashier B. B. U. States, Fayetteville, N. C.

ENGINEER DEPARTMENT,
Washington, February 8, 1848.

I certify that the foregoing letters to John Haske, esq., president U. S. Branch Bank, Fayetteville, N. C., to C. A. Harris, Acting Secretary of War, and to John W. Sandford, cashier of B. Bank U. S. at Fayetteville, N. C., are true copies from the records of this office.

JOS. G. TOTTEN,
Colonel and Chief Engineer.

TREASURY DEPARTMENT,
Second Auditor's Office, January 9, 1847.

SIR: Enclosed is a certificate, No. 3088, for \$152 95, payable by the paymaster here (T. P. Andrews) to you or order, as the attorney of the administratrix, the same being for the pay and emoluments of Brevet Major George Blaney, of the (military) Corps of Engineers, from April 1, 1835, to May 15, 1835, when he died, which you will please take charge of accordingly.

Respectfully, &c.,

JNO. M. McCALLA,
Second Auditor.

RICHARD BURGESS, Esq., Attorney &c., Present.

True copy :

J. F. POLK,
Chief Clerk Second Auditor's Office.

TREASURY DEPARTMENT,
Third Auditor's Office, January 9, 1847.

SIR: A special statement has been made of the account of the late Major George Blaney of the Corps of Engineers, by the accounting officers of the treasury, wherein the following sums have been applied to his credit in liquidation of the balances heretofore standing at his debit in reference to these works, viz :

On account of fortifications at Oak island	\$130 43
On account of improving the navigation of Cape Fear river	1,684 09
	<hr/> 1,814 52 <hr/>
And there still remains at his debit on account of Quartermaster's Department, the sum of.....	\$26 00

The difference of \$4,586 96 resulting from the present adjustment of Major Blaney's account, between \$6,401 48, the amount of credits claimed in the account presented by his representative, and the

amount passed to his credit as above stated, will be found explained by reference to the statement herewith enclosed.

Very respectfully, your obedient servant,

PETER HAGNER, *Auditor.*

RICHARD BURGESS, Esq.,

Attorney of Mrs. Mary E. D. Blaney,

Adm'x of Major George Blaney, deceased,

Washington, D. C.

Statement of difference arising on settlement of an account presented by the representative of the late Major George Blaney, deceased, in which the following credits were claimed, viz:

For the difference between the amount of compensation to which the deceased was entitled on his disbursements on account of fortifications at Oak island, between 1st January, 1826, and 3d March, 1835, and the amount heretofore allowed.....	\$1,161 02
For the same on his disbursements on account of works at Cape Fear river, between 29th May, 1829, and 3d March, 1835.....	2,366 34
For the amount of voucher four heretofore suspended, on account of works at Cape Fear river.....	130 12
For services as assistant commissary of subsistence at Oak island, between 1st January, 1826, and 3d March, 1835, 69 $\frac{1}{10}$ months, at \$20 per month.....	1,382 00
For similar services at Cape Fear river, between the 3d quarter, 1829, and 3d March, 1835, 62 $\frac{1}{10}$ months, at \$20 per month.....	1,362 00
Amounting to.....	\$6,401 48

On the above items the following allowances have been made, and the sums hereinafter specified passed to the credit of the deceased, in pursuance of the decision of the Second Comptroller of 8th January, 1847, viz:

Additional compensation on his disbursements for fortifications at Oak island—allowed.....	\$1,161 02
From which was deducted for want of appropriation.....	*1,030 49

This sum passed to his credit on that account..... \$130 43

*Appropriated at the last session, and paid to Mrs. Blaney 15th March, 1847.

Additional compensation on account of the works at Cape Fear river— allowed.....	\$2,155 89
From which was deducted for want of appropriation.....	*601 92
<hr/>	
This sum passed to his credit on ac- count of this work.....	\$1,553 97
The amount of suspended voucher No. 14, re- turned with the required evidence and ad- mitted, on account of Cape Fear river.....	130 12
<hr/>	
Amount allowed and passed to the credit of de- ceased, closing his accounts for the above works as per official statement.....	\$1,814 52
Amount of difference.....	\$4,586 96
<hr/> <hr/>	
The difference is thus accounted for—	
Amount suspended for want of appropriation on account of fortifications at Oak island.....	\$1,030 59
On account of works at Cape Fear river.....	601 92
<hr/>	
	\$1,632 51
Amount disallowed, embracing the two items of charge above stated for services as assistant commissary of sub- sistence, viz: \$1,382 and 1,362, amounting to.....	2,744 00
Add the difference between \$2,366 34, claimed for addi- tional compensation on account of Cape Fear river, and \$2,155 89, the sum allowed as stated above.....	210 45
<hr/>	
Amount of difference, as above stated.....	4,586 96
<hr/> <hr/>	

The amounts passed to the credit of Major Blaney, as herein
before stated, having been applied to close his accounts for
the works at Oak island and Cape Fear river, there still
remains at his debit on account of Quartermaster's Depart-
ment, the sum of..... \$26 00

TREASURY DEPARTMENT,

Third Auditor's Office, January 9, 1847.

TREASURY DEPARTMENT,

Third Auditor's Office, February 9, 1848.

SIR: In reply to the request contained in your letter of this date,
to be informed as to the settlement and close of the accounts of the

*Appropriated at the last session, and paid to Mrs. Blaney 15th March, 1847

late Major George Blaney, of the Corps of Engineers, for disbursements on account of fortifications at Oak island and improvements of Cape Fear river, I have to state that the accounts having been reported to the Second Comptroller for his decision, on the 12th March, 1847, and returned by him on the following day, the result was a balance in favor of the estate of the deceased of \$1,606 50, which sum you will recollect was paid to you as attorney of the administratrix at this office on the 15th March, 1847.

Respectfully, your obedient servant,

PETER HAGNER, *Auditor.*

RICHARD BURGESS, Esq.,
Washington City.

TREASURY DEPARTMENT, *March 24, 1852.*

SIR: I have the honor to transmit herewith the report of the Third Auditor dated 23d instant, upon the case submitted to him in the papers enclosed in your letter of the 11th instant, returning also the papers.

Very respectfully, your obedient servant,

WILLIAM L. HODGE,

Assistant Secretary of the Treasury.

Hon. THOMAS G. PRATT, *United States Senate.*

Hon. Thomas G. Pratt, United States Senate, March 11, 1852, transmits a statement of the claim of the estate of the late Major George Blaney, engineers; copy of a letter from the Third Auditor of the 9th January, 1847, and copy of a statement of differences.

And asks to be informed—

1st. What was the decision of the circuit court for New York in the case of Major Delafield?

2d. Whether the accounts of any officer have been settled under it? And,

3d. What effect that decision would have if applied to the claim of the widow and administratrix of the late Major Blaney, now pending before the Committee on Claims of the Senate?

The files of this office furnishing no information in regard to the 1st and 3d queries of this letter, it is respectfully referred to the Solicitor of the Treasury, with the request that he will inform me of the decision of the court in Major Delafield's case, and also of the bearing of that decision if any on the case of the late Major Blaney.

Please return these papers.

JOHN S. GALLAHER, *Auditor.*

THIRD AUDITOR'S OFFICE, *March 15, 1852.*

THIRD AUDITOR'S OFFICE: Received back March 19, 1852. The letter of Hon. Mr. Pratt will be retained on file in this office.

TREASURY DEPARTMENT,
Solicitor's Office, March 18, 1852.

SIR: I have the letter of the Hon. Mr. Pratt, and the papers which accompanied relating to the claim of the representative of the late Major George Blaney, referred by you to this office.

In reply to your inquiries I have to state that after strict search no copy of the decision of the circuit court for New York in the case of Major Delafield can be found on the files of the office. I enclose you, however, a copy of a letter from this office, dated December 28, 1844, to the Second Comptroller of the Treasury in regard to the final adjustment of Major Delafield's account under the decision of the Supreme Court affirming the decision of the circuit court, and which, I have no doubt, recites with substantial accuracy the said decision. From that letter you will perceive that the affirmation of the decision of the circuit court was not made in the form of a *positive decision*, but *resulted* from an equal division of the court.

In consequence of this circumstance this office appears to have formed the opinion that nothing was settled by it but the suit with Major Delafield; and the solicitor refers to the case of General Gratiot, which was understood to involve some of the same questions, in which it was understood the Supreme Court would prepare a full opinion. The case of General Gratiot will be found reported at large in Howard's Reports, vol. 4, p. 81, &c.

If full and exact information in regard to the decision of the circuit court in the case of Delafield is desired, it will be found in the copy of the record filed in the Supreme Court.

How far the decisions in the cases of Delafield and Gratiot bear upon the claims of Major Blaney the committee who have it under consideration are more competent to decide than I am.

I return the letter of Mr. Pratt and the papers which accompanied it; and am, very respectfully, your obedient servant,

J. CLARK, *Solicitor.*

JOHN S. GALLAHER, Esq.,
Third Auditor of the Treasury.

OFFICE OF THE SOLICITOR OF THE TREASURY,
December 28, 1844.

SIR: I submit the following statement in reply to your letter of the 27th instant, touching the further withholding of the pay of Major Delafield:

The judgment of the circuit court in the case of the United States *vs.* Richard Delafield, has been affirmed by the Supreme Court at the present term by a divided court. This case involves some of the same questions which arise in that of Colonel Gratiot, in which it is understood the court will prepare a full opinion. At the hearing of the case *vs.* Delafield in the district court the United States attorney requested the court to give the following instructions to the jury:

1st. That the duties performed by the defendant, being the ordinary duties appertaining to the office of an engineer, he was bound to perform the same without any extra compensation beyond his pay and emoluments as such officer on account of such service.

2d. That the rules and regulations of the army do not allow any extra compensation to officers of the engineers for services performed in relation to any works other than fortifications.

3. That no usage can bind the department to allow any extra compensation not allowed by law.

4th. That there is no such usage proved.

5th. That there is no proof of any contract, express or implied, to pay any such extra compensation.

6th. Any special allowances made by the department for special reasons, do not show a general usage or create any liability to make the same allowance in cases where, in their judgment, such special reasons do not exist. The allowance being an act of discretion, the department is the sole judge of the propriety of such allowance.

7th. That the rules and regulations of the army in regard to the compensation to be allowed to officers discharging the duties of assistant commissaries of subsistence, apply to issues to troops of the army only; and any allowance for the performance of the duty of assistant commissaries of subsistence to laborers and workmen must rest entirely in the discretion of the department, and that the department has exercised such discretion in refusing such allowance to captains, being extra compensation; which instructions the judge refused to give; whereupon, the United States attorney excepted.

The judge instructed the jury that if any account had been once settled and allowed at the Treasury Department, the items of that account so allowed could not, without further notice, be re-examined and disallowed by the department and charged as a difference in a subsequent account. To this part of the charge the United States attorney excepted.

That so far as respected the defendant's charge for compensation for services rendered as assistant commissary, which had been disallowed, there was no foundation for the distinction between the services, whether rendered by a lieutenant or a captain, as set up and insisted on in this case. To this part of the charge the United States attorney excepted.

That the regulation of the army equally applied to both officers when rendering like services. That, as respected the per diem allowance charged in this case and disallowed by the accounting officers of the Treasury, there is no distinction between disbursements made on a civil or military work, so far as respects the claims of the disbursing officer, under regulation of the army issued from the War Department. To this part of the charge the United States attorney excepted.

The jury found a verdict for the defendant. The cause was brought up to the circuit court, and the judgment of the district court was affirmed.

Under such circumstances I am not aware of any objection to re

lieving Major Delafield from the stoppage of his pay. As requested, I return the letter of Major Delafield which was enclosed in your communication of the 27th instant.

I am, very respectfully, your obedient servant,

C. B. PENROSE, *Solicitor.*

ALBION K. PARRIS,
Second Comptroller.

TREASURY DEPARTMENT,

Third Auditor's Office, March 23, 1852.

SIR: In reference to the claim of the administratrix of Major George Blaney, Corps of Engineers, deceased, enclosed in the letter from the Hon. Thomas G. Pratt, of the 11th instant, I have the honor to state:

That there being no information on the files of this office in regard to his first and third inquiries, the letter and papers enclosed were referred to the Solicitor of the Treasury, with the request that he would communicate the desired information to this office.

The Solicitor's letter of the 18th instant, and a copy of the letter of Mr. Solicitor Penrose of the 28th instant, December, 1844—in reference to the case of Delafield, referred to by the claimant—enclosed therein, are respectfully furnished herewith, in reply to the first and third inquiries.

In reply to the second inquiry, I have to state that the records of this office furnish no evidence of the account of any officer having been settled under the decision of the circuit court for New York in the case of Major Delafield.

On examining the papers enclosed by the Hon. Mr. Pratt, it is perceived that the letter from this office of the 9th January, 1847, is mainly in reference to the special statement of that date; but the report of the Third Auditor of the 5th, and Second Comptroller's decision thereon of the 8th January, 1847, furnished to the attorney of the administratrix on the 6th May, 1847, do not appear to have been submitted with the claim. Deeming these to be essential to a full and clear understanding of its merits, irrespective of any bearing in the case of Major Delafield may or may not have thereon, I respectfully transmit an extract of so much as relates to the claim for pay for Major Blaney's services as assistant commissary of subsistence, and an extract from the Auditor's report of the 4th April, 1845, and from the Comptroller's decision thereon, dated June 23, 1845.

The act of March 2, 1821, "to reduce and fix the military peace establishment," enacts * * * * "that there shall be as many assistant commissaries as the service may require, not exceeding fifty, who shall be taken from the subalterns of the line, and shall, in addition to their pay in the line, receive a sum not less than ten nor more than twenty dollars per month." * * * * . And the allowance of \$20 per month to *subaltern* officers stationed on the Gulf of Mexico, who were not receiving the compensation for disburs-

ing, is supposed to have been granted by the Secretary of War, in 1843, under that authority.

The papers transmitted by the Hon. Mr. Pratt—viz: the claim of Mrs. Blaney; the copy of a letter from this office to Richard Burgess, esq., attorney, dated January 9, 1847, and the copy of the statement of differences to which it refers—are returned herewith.

I have the honor to be, with great respect, your most obedient,
JNO. S. GALLAHER, *Auditor*.

Hon. THOMAS CORWIN,
Secretary of the Treasury.

Extract from the report of the Third Auditor on the items of credit claimed by the representative of Major George Blaney, late of the Corps of Engineers, deceased, presented 17th December, 1846—report dated January 5, 1847.

* * * * *

“In regard to the fourth and fifth items, to wit, a claim of twenty dollars per month, for services as acting assistant commissary of subsistence, in reference to each of the public works before mentioned, heretofore frequently rejected in the several settlements made of the accounts of the deceased, it seems only necessary now to refer to the repeated unequivocal decisions of the accounting officers of the Treasury, and especially to the last decision of the Comptroller in relation thereto, subjoined to the accompanying report from the Third Auditor of the 4th of April, 1845; and further to remark that the disbursements made by the deceased for procuring subsistence for the use of the laborers and workmen employed on the works were as applicable thereto as were any other items of expenditure for materials, &c., embraced in his accounts; and the sums so expended constituting portions of the aggregate amounts on which compensation has been allowed, he received the only equivalent for such services to which he was considered entitled under existing regulations. It was certainly his duty to show that the provisions, as well as other property purchased, had been properly applied to the public service—and such duty constituted an essential branch of the extra service assigned him—for a faithful performance of which, on his part, the regulations provided a specific compensation in the form of a per diem or commission. And hence it will be perceived that, in accounting for the public moneys and the public property entrusted to his hands as the superintendent or agent for those public works, no separate, distinct, or independent service was either required or performed, and that consequently Major Blaney discharged no duty that was not, from the nature and character of the services imposed, necessarily involved in, and inseparably connected with, their fulfilment.

* * * * *

Extract from Second Comptroller's decision on the foregoing.

“TREASURY DEPARTMENT,
“*Second Comptroller's Office, January 8, 1847.*

* * * * *

“The claims for services as an assistant commissary cannot be admitted.

“ALBION K. PARRIS, *Comptroller.*”

*Extract from the Third Auditor's report of the 4th of April, 1845,
referred to in the foregoing.*

* * * * *

“The third item in the claim of Mrs. Blaney is for the services of Major Blaney, doing the duty of assistant engineer in receiving, issuing, responsibility and accountability of the subsistence stores purchased for the work people employed on the erection of the fort at Oak island, N. C., in part of the years 1826, '27, '28, '29, '30, '31, '32, '33, '34, and to March 3, 1835—in all, $69\frac{1}{10}$ months, at \$20, = \$1,382.

“This claim is not considered admissible. There is no authority for the charge. Mr. Calhoun, the Secretary of War, in a letter to the Third Auditor, dated December 3, 1823, decided ‘that \$20 per month, in addition to their pay and emoluments, should be allowed to subaltern officers stationed on the Gulf of Mexico, who were not receiving the compensation for disbursing, as a compensation for the performance of the duties of assistant commissary of subsistence.’ Major Blaney, being in the receipt of \$2 per day for disbursing, is therefore excluded under that decision.

“In the case of Lieutenant S. Tuttle, who claimed the allowance of \$20 per month for performing the duties of assistant commissary of subsistence at Oak island, N. C., from November 1 to December 31, 1825, Mr. Eaton, then Secretary of War, on the 10th February, 1829, made the following decision, viz: ‘The above allowance seems to be at variance with the practice heretofore maintained by the accounting officers. The Secretary of War is indisposed to alter any rule the tendency of which shall be to enlarge expenditure. It is accordingly disallowed. Signed, J. H. Eaton.’

“In view of the principles established in the above mentioned cases, the Third Auditor considers the claim of Major Blaney not admissible.

“The fourth item is a claim for a similar allowance at Cape Fear river during the years 1829, '30, '31, '32, '33, and '34, and to 3d March, 1835—in all, $68\frac{1}{10}$ months, at \$20 per month, \$1,362—which is considered to be inadmissible for the reasons stated above.”

* * * * *

Extract from the Comptroller's decision on the Auditor's report of the 4th of April, 1845.

“TREASURY DEPARTMENT,
“*Second Comptroller's Office, June 23, 1845.*

“If the two first items in the account of Mrs. Blaney come within the decision of the Supreme Court in the case between the United States and General Gratiot, they should be allowed.

* * * * *

“It seems to me that the other items in the account are inadmissible.

“ALBION K. PARRIS, *Comptroller*”

TREASURY DEPARTMENT,
Third Auditor's Office, May 9, 1856.

SIR: Agreeably to an order from the Court of Claims, dated April 10, 1856, a certified copy of which was transmitted to you, and by you referred on the 12th of the same month to this office, I herewith enclose sundry original abstracts or returns rendered by Major George Blaney, deceased, late Corps of Engineers, of provisions received and issued to persons employed on the fortifications at Fort Caswell (Oak island) and improvements of Cape Fear river, North Carolina, between the 4th quarter of 1826 to the 1st quarter of 1835, inclusive. The abstracts for some of the quarters within the above period are not found on file; those which are sent herewith being all which were transmitted to this office with Major Blaney's accounts.

I also enclose a list of these abstracts, to which is appended a receipt which, it is requested, will be signed by the Clerk of the Court of Claims, and transmitted to you or to this office, to be retained until the abstracts shall be returned for file with the accounts from which they have been withdrawn.

I deem it proper to state that a claim was presented by the administratrix of Major Blaney for his services as assistant commissary of subsistence at Oak island and Cape Fear river, which was rejected by the accounting officers as inadmissible; and that for a part of the period for which compensation was claimed on account of Oak island, Major Blaney had made payments for the same services to other officers; that is, he paid Lieutenant *R. D. A. Wade* for services as assistant commissary of subsistence at Oak island for *one and a half* ($1\frac{1}{2}$) month, in the *second quarter* of 1829, at \$20 per month, and Lieutenant *A. J. Swift* for similar services at the same place, for the months of *November* and *December*, 1830, at the same rate, and that the vouchers for said payments were *certified by Major Blaney*.

The communications referred by you to this office are herewith returned.

I have the honor to be, very respectfully, your obedient servant,
SAM'L S. RIND, *Acting Auditor*.

HON. JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
Third Auditor's Office, May 13, 1856.

SIR: I have the honor to enclose herewith the provision returns requested by the Court of Claims, rendered by Major George Blaney between the 4th quarter of 1826 and 1st quarter of 1835, together with a list of the same, to be receipted for by the Clerk of said Court.

The several returns for the different works are distinguished by the respective periods to which they relate, and not by the numbers of the settlements which were endorsed upon them at the time they were withdrawn merely to designate the particular settlement with which each was filed, in order that they may be restored to their proper files with greater facility when they shall be sent back to this office. The numbers of the settlements have no necessary connexion with the returns, and, having been endorsed upon them for a purpose which does not extend beyond this office, it has been deemed proper to omit them in the list sent herewith.

Very respectfully, your obedient servant,

SAM'L S. RIND, *Acting Auditor.*

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

WAR DEPARTMENT,
Washington, February 6, 1857.

SIR: I have received your letter of the 27th ultimo, enclosing an order of the Court of Claims asking information whether Major George Blaney performed the duty of assistant commissary of subsistence at the works on Cape Fear river and at Oak island, between the last quarter of 1826 and first quarter of 1835, &c., and, in reply, transmit a report of the Commissary General, stating that he did not perform any duty in his department during the period stated; and also a report of the chief engineer, stating that Major Blaney, while superintending engineer and disbursing officer at the works above named, purchased and supplied provisions to the laborers employed upon them, and that for this service he claimed and paid himself, during parts of the years 1826, 1827, and the whole of the year 1828, the \$20 per month allowed by law to subaltern officers while acting as assistant commissaries of subsistence. These payments were disallowed by the accounting officers and by the Secretary of War, and the amount of them was refunded by Major Blaney.

Very respectfully, your obedient servant,

JEFFER. DAVIS,
Secretary of War.

S. H. HUNTINGTON, Esq.,
Chief Clerk Court of Claims, Washington.

OFFICE OF COMMISSARY GENERAL OF SUBSISTENCE,
Washington, January 30, 1857.

SIR: In obedience to your instructions to report upon the order of the Court of Claims for information "whether Major George Blaney performed the duty of an assistant commissary of subsistence between the last quarter of 1826 and the first quarter of 1835, both inclusive," I have the honor to state, the books of this office show that Major George Blaney did not perform any duty under my instructions, or in connexion with this department, during the time stated; never having received any funds from the appropriation for army subsistence, nor subsistence stores belonging to this department, and never having rendered an "account" or "return" to this office between the last quarter of 1826 and the first quarter of 1835, both inclusive.

Very respectfully, your most obedient servant,

GEO. GIBSON,

Commissary General of Subsistence.

Hon. JEFFERSON DAVIS,
Secretary of War.

ENGINEER DEPARTMENT,
Washington, February 5, 1857.

SIR: In answer to the request from the Court of Claims, dated the 27th ultimo, and referred by you to this office for report of "information whether Major George Blaney performed the duty of an assistant commissary of subsistence at the works for the improvement of Cape Fear river and the works at Oak island, between the last quarter of 1826 and the first quarter of 1835, both inclusive," I have the honor to state:

That there is no information in this office that Major Blaney performed duty as "commissary of subsistence" at either of the works specified.

As the superintending engineer and disbursing officer of those works, Major Blaney purchased and supplied provisions to the laborers employed upon them, and he claimed, and paid himself, for that service, a special compensation at the rate then allowed by regulations to subaltern officers while acting as "assistant commissary of subsistence," (\$20 per month,) as follows, viz:

For part of the 3d quarter of 1826.....	\$20
For the 4th quarter of 1826.....	60
For the 1st, 2d, and 3d quarters of 1827.....	180
For the 1st, 2d, 3d, and 4th quarters of 1828.....	240
	<hr/>
	500
	<hr/>

In settling the accounts in which these charges were made, the amount claimed for this service was disallowed by the accounting

officers of the treasury; but the charge was, notwithstanding, continued for the period just stated, and until Major Blaney was informed from this office that, upon an appeal from him, "the Secretary of War has decided that no allowance shall be made to the disbursing officer for compensation as assistant commissary of subsistence, as the commissions for disbursements cover the responsibility incurred in this as in other cases."

The disallowed amount was subsequently refunded by Major Blaney, and he does not appear to have renewed the charge.

The application from the Court of Claims, and the papers referred with it, are respectfully returned.

I am, very respectfully, your most obedient,

JOS. G. TOTTEN,

Brevet Brigadier General Topographical Engineers.

HON. JEFF'N DAVIS,

Secretary of War.

TREASURY DEPARTMENT,

Second Comptroller's Office, January 7, 1857.

SIR: Your letter of the 26th ultimo, asking for certain information to be used in the case of Mrs. Mary E. D. Blaney, administratrix of Major Geo. Blaney, before the Court of Claims, was received on the 1st instant, and on that day I wrote to the Third Auditor requesting him to furnish the information called for, and I now transmit his reply, dated yesterday, to my letter.

Very respectfully, your obedient servant,

J. M. BRODHEAD,

Comptroller.

JNO. D. MCPHERSON, Esq.,

Deputy Solicitor Court of Claims, Washington, D. C.

TREASURY DEPARTMENT,

Third Auditor's Office, January 6, 1857.

SIR: I have received your letter of the 1st instant, in which you request to be furnished with any information to be found in this office relating to the following inquiry made of you by J. D. McPherson, esq., deputy solicitor of the Court of Claims, at the request of the Court, viz: "Whether any person was paid for services in receiving, issuing, and accountability for subsistence stores for the laborers employed on the public works at Oak island, (Fort Caswell,) North Carolina, from the 1st September, 1826, to the 3d March, 1835, and at Cape Fear river for the same period," credit being claimed by Mrs. Mary E. D. Blaney, widow and administratrix of Major Geo. Blaney, at the rate allowed for an acting assistant commissary of subsistence for the time between these two dates. In reply, I have to state that

it does not appear that any payment was made to Captain Blaney for such services at the time mentioned; but he is found to have paid to Lieutenant R. D. A. Wade, at Oak island, as acting assistant commissary of subsistence, in 3d quarter 1829, \$90; in 4th quarter 1829, \$60; and in 1st and 2d quarters 1830, \$120—in all, \$270. He also paid Lieutenant A. J. Swift, acting in the same capacity, at the same place, from 1st November, 1830, to 31st March, 1831, for 2d, 3d, and 4th quarters 1831, for 1st quarter 1832, and from 31st March to 31st May, 1832, the sum of \$380, being at the rate of \$20 per month.

I also find that he had in his employment, at the above mentioned place, in the 4th quarter 1826 and in the 1st quarter 1827 and 3d quarter 1829, 1 superintendent, at \$3 50 per day; 1 clerk, at \$60 per month; 1 overseer, at \$1 50 per day; 3 sub-overseers, at \$1 per day each; a baker and assistant baker, each at \$20 per month, together with a victualler and several cooks. It is presumed that such persons were employed during the whole time; and if it should be deemed desirable, an examination will be made to ascertain whether that was really the case. The memorandum of certain payments received by you from Mr. McPherson is herewith returned.

Very respectfully, your obedient servant,

ROB. J. ATKINSON,

Auditor.

J. M. BRODHEAD, Esq.,

Second Comptroller.

THE UNITED STATES,

*To the estate of Major George Blaney, deceased,
late of the Corps of Engineers, DR.*

To interest on \$2,438 12, the private funds of Major Blaney, and for which he signed a check in favor of Mrs. Blaney on the day of his death, on the Bank of the United States, at Fayetteville, North Carolina, which check the bank refused to pay under instructions of the Acting Secretary of War, and which sum was placed in the treasury of the United States for the public use, as fully set forth and explained in the memorial to Congress, viz: from 15th May, 1835, to the 13th March, 1847, at 6 per cent. per annum, being eleven years nine months and twenty-nine days, is \$1,730 41

To interest on \$152 95, being the amount of pay and emoluments due to Major Blaney at the time of his death, the payment of which was withheld until her accounts were finally settled on the 13th March, 1847; the non-settlement of his accounts arising from an erroneous decision of the accounting officers, as shown by a decision of the Supreme Court in an analogous case, and in pursuance of which Major Blaney's accounts were finally settled,

resulting in a balance in his favor, as stated and claimed by him, at six per cent. per annum, being eleven years nine months and twenty-nine days..... \$115 02

1,845 43

E. E.

MARY E. D. BLANEY,
Administratrix of Major George Blaney,
 By R. BURGESS, *her attorney.*

[See correspondence between the officers of the bank and the Acting Secretary of War, (C. A. Harris,) filed with the petition.]

THE UNITED STATES,

To the estate of Captain George Blaney, deceased,
late of the Corps of Engineers, DR.

For services in receiving, issuing, responsibility and accountability for subsistence stores for the laborers employed on the public works at Oak island, North Carolina, in the years 1826, '27, '28, '29, '30, '31, '32, '33, '34, and to 3d March, 1835—in all, $69\frac{1}{10}$ months, at \$20 per month.....\$1,382

For same services at Cape Fear river, North Carolina, for the same period—in all, $68\frac{1}{10}$ months, at \$20 per month..... 1,362

\$2,744

The authority for the above charge is found in the case of Major Delafield, of the Corps of Engineers, for similar services between the years 1822 and 1830; within that period he was a lieutenant, and promoted to a captaincy; was the officer in superintendence of the fortifications then erecting at Fort Jackson, on the Mississippi; and also acting as assistant commissary for the laborers employed on that work. For this latter service he charged at the rate of \$20 per month, which, on the settlement of his accounts, was disallowed by the accounting officers of the treasury, on the ground that he was at the time in the receipt of the extra compensation allowed by the regulations of the army to disbursing officers. At a subsequent period the claim was submitted to the Secretary of War, (Mr. Poinsett,) who directed that the usual allowance of \$20 a month should be paid to Major Delafield for the period he acted as assistant commissary at Fort Jackson until his promotion to a captaincy, after which the allowance could not be legally made. It was accordingly so allowed in the settlement of his accounts. The amount charged for the period subsequent to his promotion was disallowed, and formed an item in dispute when suit was instituted against him. On the trial of the case in the circuit court of New York, (Judge Betts presiding,) it was decided that the allowance appertained to the officer *performing the duty*, without regard to his rank, and his claim was admitted. An appeal on this, with other questions at issue, was taken to the Supreme Court of the United States, where, after hearing argument,

at December term, 1844, the court being equally divided, the judgment of the court below stood affirmed. The language employed in the Supreme Court, that the judgment of the circuit court is "affirmed," is deemed to have established the law in the case for all practical purposes; and hence the principal of the allowance claimed by Major Blaney is considered to have been sanctioned by the highest judicial authority, and, as such, should be binding upon the accounting officers of the treasury. It is believed to be the universal practice in the settlement of questions under the revenue laws, in the Treasury Department, to be governed by the decisions of the courts in the allowances of accounts and claims. But, independent of all this, and admitting, for the sake of the argument, the views above presented to be incorrect, yet the high respect and deference due to such distinguished authority as the courts referred to it was hoped would have had its just weight with the accounting officers in the exercise of their discretionary power in such cases, to have induced a decision favorable to the claim now under consideration, identical in principle with the case decided by those courts. This, moreover, would seem to be one of those cases in which, with great propriety, might be applied the humane and wise maxims of the law, that whenever there is a doubt, that doubt should operate in favor of the weak against the strong, the one against the many, the individual instead of the government. Yet, notwithstanding all these considerations, the accounting officers have refused to admit the claim; an appeal is therefore made from their decision to the more just and enlightened representatives of the people, by

MARY E. D. BLANEY,
Administratrix of Major George Blaney,
 Per R. BURGESS, *her attorney.*

WASHINGTON CITY,
 February 22, 1848.

Upon examination of the subsistence returns by Major Blaney, in the engineer department, I find that, after deducting from the whole period of his service from 1826 to 1835, the time for which other officers were paid as commissary of subsistence at Oak island, Major Blaney would be entitled to $65\frac{1}{10}$ months, at \$20 per month, (over and above all deductions,) amounting to..... \$1,302

At Cape Fear river Major Blaney served as commissary from the 3d quarter 1829, to 3d March, 1835, (over and above all accounts or deductions,) $65\frac{1}{10}$ months, at \$20 per month, .. 1,302

2,604

RD. BURGESS.

DECEMBER 18, 1856.

IN THE COURT OF CLAIMS.—No. —.

ON THE PETITION OF MARY E. D. BLANEY.

Brief of United States Solicitor.

The first item of claim is for interest. The settled principle that interest is not due from the government as an incident to a debt is thought not to be applicable to the case which it is sought to distinguish from the ordinary case of a balance ascertained to be due on settlement. The circumstance which is relied on to distinguish it is, that Major Blaney, major of engineers, in charge of public works at Cape Fear river and Oak island, on his death-bed gave a check on the Bank of the United States, at Fayetteville, North Carolina, in favor of his wife for \$2,438 12, where he had funds deposited to his account as follows :

Cape Fear river.....	\$1,762 99
Oak island.....	1,419 56—\$3,182 55;

which check the cashier of the bank refused to pay, but, under instructions from the Secretary of War, turned over the whole amount, \$3,185 55, to the Treasurer of the United States.

It is said that this is an appropriation of Blaney's private funds to the extent of the \$2,438 12. If that were true, it was not wrongful, for he had chosen to tangle items with what is admitted to be public money. But it was not private funds; only \$1,606 was allowed him afterwards. The amount was with him as a public officer, and on account of specific public objects, and although it turned out afterwards that he had a just claim to a portion of the money, he had no actual possession of it. It was deposited specially to his credit as an officer in the depository of public money.

It is true that the rightfulness of his claim was afterwards acknowledged, and it was ascertained by the decision in Gratiot's case that if he had actually drawn the money it could not have been recovered from him; but that fact does not entitle him to interest on it, nor is it perceived how the circumstance that he attempted to withdraw the amount from the fund standing to his own credit on special deposit, and did not succeed in getting the money, put the case on a different footing from a similar unsuccessful attempt, had the fund been to any other person's credit.

The money was treated by the bank and the Secretary as public money. This must be deemed right till the contrary appears. Part of it is admitted now by the petitioner to have been public money, and nothing is shown to rebut the presumption that it was all public money but the fact that so much money was allowed Blaney after the suit against Gratiot, and then the sum of \$1,606 51 was paid him. (See letter of Heyner, 15th March, 1847.)

II. *The claim for services in receiving and issuing subsistence, &c., for laborers, &c., on the public works at Cape Fear river and at Oak island.*

The regulations limit the allowance to subaltern officers and to issues to troops.

The authority of the case of Delafield is relied on to support this part of the claim; but as that case was affirmed on appeal by a divided court, but little weight can be given to the case, and it seems to me that the weight of reason is on the side of the usage of the department. The reason is not the same for allowing this to others as to subalterns, as the circuit court supposed, especially if the regulation applies to laborers employed by engineers, because the engineers in charge of the works are allowed \$2 per day for such work, for disbursement, &c., of funds appropriated to carrying on the work. Now, this subsistence is paid out of the appropriations, for the disbursement of which, and for the responsibility attending the purchases and care of articles purchased, the per diem is expressly given. What reason is there for distinguishing between the mode of compensation for money and services rendered in hiring men, and those provisioning them, particularly when no separate account is kept, but the whole is charged to the appropriations on account of the work on which the men are employed in an account rendered to the engineer department, and not in a separate account rendered to the subsistence department, as contemplated by the regulations on subject of allowance to assistant commissaries of subsistence?

It is manifest, indeed, that there is no application to the case of engineers in charge of public works, employing laborers under appropriations for specific works, keeping a single account with the work, in which everything paid out is charged to the work, of a regulation intended for troops when there are different appropriations and accounts of pay, subsistence, transportation, clothing, &c., &c. (See Regulations, 1,140. When appointment is to be reported to the commissary general, 1,173-'4.) Quarterly returns in this case not by commissary.

If an officer of engineers, besides the \$2 per day allowed him for disbursements on each fort or work, may charge as assistant commissary of subsistence for purchases of provisions furnished to his laborers, why will he not be permitted to charge as acting quartermaster also? He does the duties of this office as fully as he does those of commissary of subsistence. There is no reason for excepting these that there is not equally for excepting the commissary's charge. These are equally included in his duties, and alike covered by the allowance of \$2 per day. (See extract from Third Auditor's report, 4th April, 1845, 17th December, 1846, and January 5, 1847.)

There is no proof offered that Blaney actually issued the provisions. On the contrary, the accounts show that there were *men* employed and paid by the government for this purpose, and the account and return was made up by a clerk. The claim rests, therefore, altogether on the responsibility for disbursements.

The allowances to subalterns do not apply to this case, because they do not receive the per diem and come within the words of the regulations.

Major Blaney is neither within the letter nor reason of the allowance. But no number of improper allowances will authorize a court to allow others.

M. BLAIR, *Solicitor.*

ADDENDA TO RECORD 161.

ENGINEER DEPARTMENT,
Washington, December 14, 1846.

SIR: In reply to your letter of the 12th instant, I have to state that it appears from the records of this office that the late Captain Blaney, of the Corps of Engineers, did perform "service as commissary of subsistence" at both "the works in North Carolina under his superintendence," as follows, viz:

At fort on Oak island, (*Fort Caswell*,) from about the 24th of May, 1832, to May 15, 1835.

At work for improvement of Cape Fear river, from January 1, 1833, to May 15, 1835.

It appears also, from his accounts, that he received compensation for the performance of this service; that his accounts therefor were disallowed by accounting officers of the treasury, and that he refunded the amount to the United States.

Prior to the periods above stated, Captain Blaney was assisted in the superintendence of these works by officers of the army, by whom the duty of commissary was performed; and it appears from his accounts they received compensation for this service, but whether this compensation was allowed on settlement of Captain Blaney's accounts at the treasury is not certainly known in this department.

There were no orders issued to Major Blaney from this office "between the 1st of March and 15th May, 1835," that would entitle him to an allowance for transportation of baggage.

I am, very respectfully, your most obedient,

JOS. G. TOTTEN,
Col. and Chief Engineers.

Mr. RICHARD BURGESS, *Present.*

ENGINEER DEPARTMENT,
July 16, 1858.

I certify that the above and foregoing is a true copy from the records of this office.

H. G. WRIGHT,
Capt. of Eng., in charge.

This letter was written when the facts were fresh in the mind of the department. It is offered in evidence to prove that Major Blaney

was recognized as performing "the service as commissary of subsistence." The fact that he performed that service for a series of years anterior to May, 1832, is shown by his returns of provisions issued, on file with the papers in the case. It also shows that payments were made for like service at different periods to other officers at the same places, and, according to the decisions of the United States courts in Major Delafield's case, in all respects analogous, that the pay, &c., was to the officers who performed the duty, without regard to his rank. The claim of Mrs. Blaney would seem to be fully covered by these decisions.

RD. BURGESS.

I object to receiving this letter in evidence after the evidence on both sides has been closed and the case argued and submitted.

General Totten speaks of what appears from the records. On the part of the United States, we ought to have an opportunity to call for these records. Secondary evidence should not be received while the original records are within reach. Again, since this letter was written, (in 1846,) General Totten and the War Department have been called upon by this Court for all information in regard to this claim. We have the answers of both, and this letter can be of no use now except to contradict General Totten's last report, which should not be permitted at this stage of the proceeding when we have no opportunity to rebut it.

JNO. D. MCPHERSON,
Deputy Solicitor.

MARY E. D. BLANEY, ADM'X, *vs.* THE UNITED STATES.

JANUARY 26, 1857.

To the honorable the Secretary of the Treasury:

You are requested to furnish to the Court of Claims, to be used as evidence in the above case, information whether there exists in the Treasury Department any evidence that Major George Blaney, of the Corps of Engineers, performed the duties of an assistant commissary of subsistence at the works for the improvement of Cape Fear river and the works at Oak island, between the last quarter of 1826 and the first quarter of 1835, both inclusive; and if so, for what portion of said period it is shown that he performed such duty, together with any other information in the Treasury Department tending to elucidate said claim.

TREASURY DEPARTMENT,
Third Auditor's Office, April 6, 1857.

SIR: The order of the Court of Claims of the 26th, and the letter of Samuel H. Huntington, esq., Clerk of said Court, of the 27th of

January last, addressed to your predecessor, the Hon. James Guthrie, relative to the case pending therein, of Mary E. D. Blaney *versus* The United States, I have the honor to return herewith. By the order of the Court, the Secretary of the Treasury is requested to furnish, to be used as evidence in the above cause, "information whether there exists in the Treasury Department any evidence that Major George Blaney, of the Corps of Engineers, performed the duties of an assistant commissary of subsistence at the works for the improvement of Cape Fear river and the works at Oak island, between the last quarter of 1826 and the first quarter of 1835, both inclusive; and if so, for what portion of said period it is shown that he performed such duty, together with any other information in the Treasury Department tending to elucidate said claim."

In reply, I have the honor to state that, from the records of accounts on file in this office, it appears that Major Blaney, during his life, several times made the charge of twenty dollars per month for extra services as issuing commissary to the laborers and other persons employed under his direction at each of the works at Cape Fear river and Oak island, North Carolina, which was as often disallowed by the accounting officers. The grounds for the disallowance were, that the same regulations of the engineer department which made it his duty to disburse the appropriations for the above works, required him to make "special quarterly returns of provisions purchased for the subsistence of the persons employed in the operations, embracing a quarterly return of the issues of the same, Form 5," as well as returns of all the materials used in the works; and for this additional service, *as a whole*, fixed an extra compensation, which Major Blaney has, under the regulations, already received.

Until the decision of the Supreme Court in General Gratiot's case, however, the regulations had been construed by the accounting officers to allow to an officer but a single per diem of two dollars, although he may have been in charge of a plurality of works, and such compensation only had been paid to Major Blaney; but afterwards his accounts were stated under said decision, and he was allowed two dollars per day for each work, or four dollars for both, for the entire period of his service between the 1st of January, 1826, and the 3d of March, 1835.

At the same time, and in addition to the above, a claim was preferred by Major Blaney's legal representatives of twenty dollars per month at each of the works, or forty dollars per month for both, "for his services doing the duty of assistant engineer in receiving, issuing, responsibility and accountability of the subsistence stores purchased for the work people employed," and at the two works within the same period, $69\frac{2}{10}$ months for Oak island, and $62\frac{1}{10}$ months for Cape Fear river, at twenty dollars per month for each, amounting to \$2,744. This charge was disallowed for the reasons before stated, and especially as the extra compensation for the service, as much a part of his duty as any other connected with the works, had been extended from two to four dollars per day for the whole time that it was allowable under the regulations and the decision in the Gratiot case.

As to the evidence asked for by the Court, that Major Blaney performed the duties of an assistant commissary of subsistence at the two works in question, the letter addressed by me to your predecessor on the 9th of May, 1856, in response to an inquiry of the Court of Claims and for the use of said Court, and a letter from me to John M. Brodhead, esq., Second Comptroller of the Treasury, of the 7th of January last, a copy of which is herewith,* contain all the information upon the subject that I can furnish.

I am, with great respect, your obedient servant,

ROBT. J. ATKINSON,
Auditor.

Hon. HOWELL COBB,
Secretary of the Treasury.

IN THE COURT OF CLAIMS.

MARY E. D. BLANEY, in her own right and as administratrix of George Blaney, deceased, *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

George Blaney, late a brevet major of the Corps of Engineers in the army of the United States, died on the 15th day of May, A. D. 1835. For a considerable period previous to his death he was the superintending engineer of the fortification at Oak island and of the improvement of Cape Fear river. At the time of his death the United States were indebted to him in a large sum of money; but his accounts were not settled at the Treasury Department until March, A. D. 1847. The delay was occasioned by the suspension of certain items till after the decision by the Supreme Court of the case of Gratiot *vs.* The United States, reported in 4 How. R., 80. The amount found due to him was paid to the petitioner on the 15th day of March, A. D. 1847, but without interest. It consisted (1) of a balance due him on his accounts as disbursing agent at Oak island and Cape Fear river; and (2) of a balance due him for pay and emoluments.

The petitioner alleges that her intestate acted as assistant commissary of subsistence at Oak island and Cape Fear river for the periods mentioned in her petition, and that he was entitled to compensation therefor at the rate of twenty dollars a month.

The petitioner claims (1) interest on the balances above mentioned; and (2) compensation for the services of her intestate as acting assistant commissary of subsistence.

(1.) As regards the claim for interest, this case is in no respect different from the case of Samuel P. Todd *vs.* The United States, recently decided by this Court. In each case the balance found due to the party grew out of his official relations with the United States. The claim for interest is, therefore, rejected.

(2.) Under the army regulations of 1825, the engineer superintending the construction of a fortification or other work was required to furnish to the engineer department "a special quarterly return of provisions purchased for the subsistence of the persons employed in the operations, embracing a quarterly return of issues of the same."—No. 391. The returns made by Major Blaney, as the superintending engineer at Oak island and Cape Fear river, in pursuance of this regulation, are the only evidence now offered that he performed the duties of assistant commissary of subsistence at those places, as alleged in the petition. But these returns, being made by Major Blaney in discharge of his official duty as superintending engineer, are no evidence that he also performed the duties of assistant commissary of subsistence. With the exception of the returns for the second, third, and fourth quarters of the year 1828 for Oak island, they are alike consistent with the fact that he was, and that he was not, acting assistant commissary of subsistence for the periods embraced by them. They, therefore, do not prove, or tend to prove, that he performed the duties of assistant commissary of subsistence, as alleged. The returns for the second, third, and fourth quarters of 1828 for Oak island are signed by Major Blaney, as captain of the Corps of Engineers and acting commissary of subsistence. But it was as superintending engineer alone that he was required to make the returns. The styling of himself, therefore, in his signature to them, acting commissary, was wholly unauthorized, and, at best, mere surplusage. It was certainly not evidence that he was acting commissary. Our opinion is, that this item of the petitioner's claim is unsupported by evidence.

We are of the opinion that the petitioner is not entitled to relief.

